

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 CARY PICKETT,

4 Plaintiff

5 v.

6 C/O VALDEZ, et. al.,

7 Defendants
8

Case No.: 3:17-cv-00567-MMD-WGC

Order

Re: ECF No. 12

9 Before the court is Plaintiff's motion for leave to amend. (ECF No. 12.)

10 Plaintiff filed his complaint which was screened by the court, and Plaintiff was allowed
11 to proceed with a single retaliation claim against defendant Paul Valdez. (Screening Order, ECF
12 No. 4; Compl. ECF No. 5.) The Attorney General's Office entered a limited notice of appearance
13 for the purpose of participating in an Early Mediation Conference, which was unsuccessful.
14 (ECF Nos. 6, 9.) On November 16, 2018, the court served the Attorney General's Office with the
15 complaint electronically, and directed the Attorney General's Office to file a notice with the court
16 indicating whether or not it would accept service on behalf of Valdez. (ECF No. 11.)

17 On November 30, 2018, Plaintiff filed his motion for leave to amend, indicating that he
18 inadvertently failed to check the box on the form complaint indicating his desire to proceed
19 against Valdez in his official capacity (as well as in his individual capacity). (ECF No. 12.)

20 On December 5, 2018, the Attorney General's Office indicated it would not accept
21 service on Valdez, a former employee of the Nevada Department of Corrections, and filed his
22 last known address under seal. (ECF Nos. 13, 14.) On December 11, 2018, the court issued a
23

1 summons and ordered service on Valdez at the address filed under seal by the U.S. Marshal.
2 (ECF Nos. 16, 17.)

3 Under Rule 15(a)(1)(A), a party may amend a pleading once as a matter of course
4 (without leave of court) within 21 days after serving the pleading. In this case, the complaint has
5 not yet been served on Valdez; therefore, he did not need to seek leave to file an amended
6 complaint. Additionally, the Local Rules require a motion for leave to amend to be accompanied
7 by the proposed amended pleading which is complete in and of itself and does not reference the
8 prior pleading.

9 Plaintiff's motion is limited to simply checking the box to indicate he sues Valdez in his
10 official capacity as well as his individual capacity; therefore, in this instance, the court will
11 **GRANT** Plaintiff's motion (ECF No. 12). Plaintiff has **21 days** from the date of this Order to file
12 an amended complaint that will supersede the original complaint. The amended complaint shall
13 contain only the allegations supporting the retaliation claim against Valdez and may indicate that
14 Valdez is being sued in his individual and official capacities. The claims and defendants
15 previously dismissed with prejudice on screening are not to be included in the amended
16 complaint. Plaintiff still has until Friday, January 11, 2019, to complete the USM-285 service
17 form and return it to the U.S. Marshal's Office. Once the amended complaint is filed, the Clerk
18 shall **SEND** one copy of the amended complaint and a copy of this Order to the U.S. Marshal's
19 service for service on Valdez.

20 **IT IS SO ORDERED.**

21 Dated: December 19, 2018



William G. Cobb
United States Magistrate Judge